

**ARREST -- Admissibility of confession made after illegal arrest.....**  
**Revised 1/2010**

Under *Brown v. Illinois*, there are four factors to consider on a case-by-case basis in determining whether a confession made after an illegal arrest should be suppressed:

1. The voluntariness of the statements;
2. The temporal proximity between the arrest and the statements;
3. The presence of intervening circumstances; and
4. The purpose and flagrancy of official misconduct.

422 U.S. 590, 603-04 (1975); *see also State v. Reffitt*, 145 Ariz. 452, 458, 702 P.2d 681, 687 (1985).

As to the first factor, the state must prove by a preponderance of the evidence that appellant's confession was voluntary, including a waiver of *Miranda* rights. *Reffitt*, 145 Ariz. at 458, 702 P.2d at 687. The fact that the police gave *Miranda* warnings standing alone is insufficient to render a confession voluntary. *Kaupp v. Texas*, 538 U.S. 626, 632 (2003), *citing Brown*, 422 U.S. at 603. A one hour interval proceeding the arrest and the confession is, standing alone, insufficient to render the confession admissible. *State v. Davolt*, 207 Ariz. 191, 203, ¶ 31, 84 P.3d 456, 468 (2004). Intervening circumstances relevant to the third factor may include a subsequent release from custody, an appearance before a magistrate, discussions with a lawyer, or a subsequent conviction on unrelated charges. *Id.* at 191, ¶ 32, 84 P.3d at 468. Finally, the fourth of these factors "is entitled to special weight." *State v. Reffitt*, 145 Ariz. 452, 460, 702 P.2d 681, 689. Important considerations here are whether the police acted with bad purpose and whether they made an arguable mistake. *Id.* In *Reffitt*, the

Arizona Supreme Court found that the defendant's illegal arrest did not taint his later confession because "[t]he police actions in this case, even if erroneous and regrettable, did not involve flagrant or purposeful misconduct." *Id.* In *State v. Monge*, however, the court held that a motion to suppress evidence should have been granted because the police made the arrest *knowing* that they did not have probable cause. 173 Ariz. 279, 842 P.2d 1292 (1992).

The above analysis also applies in determining whether evidence should be suppressed if it was based on consent to search following an illegal arrest. See, e.g., *Monge*, 173 Ariz. 279, 842 P.2d 1292. The only difference is that there is no need for an analysis of the "voluntariness" factor. See, e.g., *Id.* at 281, 842 P.2d at 1294.